IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Bindu Rama Rao	Confirmation No.: 4770
Serial No.:	10/782,083	Examiner: Michael Young Won
Filed:	February 19, 2004	Group Art Unit: 2455
Due Date:	**April 25, 2009**	Docket No.: 200701933-2
Title:	ELECTRONIC DEVICE NETWORK HAVING GRACEFUL DENIAL OF SERVICE	

REPLY BRIEF TO EXAMINER'S ANSWER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Mail Stop Appeal Brief – Patents
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Reply Brief Under 37 C.F.R. §41.41

This Reply Brief is submitted in response to the Examiner's Answer mailed on February 25, 2009 in the above-identified case. Appellant submits this Reply Brief to directly address some of the comments in the Answer. Appellant does not waive the arguments presented in the Appeal Brief filed December 9, 2008. Instead, all arguments presented in Appellant's Brief are incorporated by reference herein. Further, Appellant responds to the Examiner's Answer as follows.

ARGUMENT

Appellant addresses here the Response to Argument section in the Answer regarding whether the combination of the Boivie and Peart references teach the features of independent claim 1 of "monitoring and evaluating the incoming access requests using the at least one update-related parameter." (Answer at p. 21). The Answer sets out that this rejection also effects claims 3-6, 8-11, 19-21, 23-31, 35, 36, 38, and 40-43. (*See*, Answer pp. 21-23).

As set forth in the Appeal Brief at page 8, Appellant agrees with the statement in the final Office Action that "Boivie does not explicitly teach 'monitoring and evaluating the incoming access requests using the at least one update-related parameter.'" The rejection relies on Peart to teach this feature missing from Boivie. The Appeal Brief also sets out how Peart does not teach this feature either because the cited network traffic is in an opposite direction to that set forth in independent claim 1. (*See*, Appeal Brief p. 8, paragraph 3).

The Answer at page 21 agrees with Appellant's reasoning regarding the opposite direction of the network traffic, but responds that "Peart suggests numerous scenarios and alternatives which clearly teach and suggest the above recited limitation," such as at column 22, lines 40-48; column 27, lines 58-61; column 30, lines 30-36; and column 31, lines 45-48.

The teaching of Peart relied upon in making the rejection relates to an "execution request . . . includ[ing] several parameters." (*See*, column 29, lines 47-50.) In this context, the reference presents an example of a web-based associated file types. (Another example includes a server-based associated file type, set forth in column 28, lines 34-36.) In each of these cases, the server provides the request to the client, and this includes network traffic in the opposite direction to the features set forth in the claims. The "numerous scenarios and alternatives" cited in the Answer and referred to in the above paragraph that "clearly teach and suggest the above recited limitation," however, does not relate to the feature of execution request in the reference. Instead they are directed to a separate and independent feature of mapping. The features of an execution request including a parameter cited in the rejection is clearly different and unassociated with the features of mapping, which is now used as a teaching that the execution requests can be reasonably made to travel in both directions.

Thus, the Answer relies on the illogical syllogism that:

1. Execution requests including a parameter travel from the server to the client;
2. Mapping can travel from the client to the server;
3. Therefore, Execution requests can travel from the client to the server.

The flaw in the argument of the Answer is that even though the network traffic travels in both directions, the execution requests only travel in the opposite direction to that which is claimed in order for the system of Peart to work. In making the rejection, the Answer does not take into account that the test for obviousness requires the reference be considered in its entirety. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568 [1 U.S.P.Q.2d 1593, 1597 (Fed. Cir. 1987). The cited feature of execution requests has a different function altogether than mapping, and the two are not interchangeable to one skilled in the art.

Appellant also address here the Response to Argument section in the Answer regarding whether Boivie is analogous art. The Answer on page 23 states "Boivie teaches of meeting service level agreement . . . such that a server is selected to process incoming requests, which is clearly in the field of the [appellant's] endeavor." Appellant maintains that Boivie represents non-analogous art. In Boivie, the "server" represents the server or server cluster 100 containing the websites. The "server" is not related to the communications bandwidth manager 110, as interpreted in the Answer.

The system and method of Boivie relate to limiting web service after reaching a threshold amount of network request whereas the Appellants endeavor includes responding to requests. Appellant agrees that both the present claims and Boivie are related to communication networks, but the similarities end soon after that. The field of network communications is so vast and complex that one skilled in the art in the field to which the claims pertain cannot be expected to know and understand the prior art in all aspects of network communications. More particularly, updating clients with servers is not analogous to limiting server traffic based on a demand for web site access.

CONCLUSION

The U.S. Patent and Trademark Office is hereby authorized to charge required fees or credits due to Deposit Account No. 50-0471 at any time during the pendency of this application.

Any inquiry regarding this Amendment and Response should be directed to either Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005 or Jeff Limon at Telephone No. (541) 715-5979. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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